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មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer / L'agent chargé
du dossier: LCH ARUN

E1/146

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

23 November 2012

Substantive Hearing on evidence - Day 133

Prepared by:

Matteo CRIPPA and SE Kolvuthy

Attendance Record
Before: Judge NIL Nonn (President), Judge Jean-Marc LAVERGNE, Judge YA Sokhan, Judge YOU Ottara, Judge Silvia CARTWRIGHT.
Reserve Judges: Judge THOU Mony, Judge Claudia FENZ.
Greffiers: Mr. Matteo CRIPPA, Ms. SE Kolvuthy.
OCP: Mr. SENG Bunkheang, Mr. VENG Huot, Mr. Tarik ABDULHAK, Mr. Keith RAYNOR.
Accused: Mr. KHIEU Samphan, Mr. NUON Chea.
Defence for the Accused: Mr. SON Arun, Mr. Andrew IANUZZI, Mr. KONG Sam Onn, Ms. Anta GUISSÉ, Mr. ANG Udom. (Mr. Michael KARNAVAS was absent from the proceedings)
Civil Parties: Ms. Elisabeth SIMONNEAU-FORT, Mr. VEN Pov, Ms. TY Srinna, Ms. Christine MARTINEAU, Mr. Madhev MOHAN, Mr. KONG Phallack.
Witness: Ms. OR RY (TCCP-105), Mr. CHAU Ny (TCCP-187).

Others: Ms. Eleanor DOYLE-MARKWICK, Mr. Arun UCH, Ms. Sotheavy SOUR.

General court times

Day	Start time: 9:05	Finish time: 15:15
Recess am	Start time: 10:45	Finish time: 11:10
Recess	Start time: 12:15	Finish time: 13:35
	Total Court Time:	4 hours 25 minutes

Proceedings

Type of Issue	Raised By	Start time	Finish time
Recognition of Civil Party Lawyers	TC	9:08	9:11
Testimony of Ms. OR Ry (TCCP-105)	CPLCL NC Defence IS Defence	9:11 10:04 10:35	10:04 10:35 10:40
Expression of suffering of Ms. OR Ry (TCCP-105)	TC	10:40	10:45
Testimony of Mr. CHAU Ny (TCCP-187)	TC CPLCL OCP	11:11 11:15 14:08	11:15 14:07 14:37
Waiver of the Accused's right to be present in the courtroom	NC Defence	12:11	12:15
KHIEU Samphan Defence questions the right of Civil Parties to refer directly to an Accused	KS Defence	14:39	14:58
Expression of suffering of Mr. CHAU Ny (TCCP-187)	TC	14:39	14:58
Observations by the parties about the expression of suffering of Mr. CHAU Ny (TCCP-187)	KS Defence	15:00	15:14

Summary of Proceedings**Recognition of Civil Party Lawyers**

The Civil Parties Lead Co-Lawyers asked the Chamber to recognise a new international civil party lawyer and a new national civil party lawyer. The national lawyer was KONG Phallack (ID 583) and had already submitted his letter to the Chamber. The International Lawyer was Mr. Mahdev MOHAN, from Singapore, representing the Civil Parties in the Access to Justice in Asia group. The Chamber recognised Mr. Mahdev MOHAN as an international lawyer for the civil parties.

Testimony of Ms. OR Ry (TCCP-105)

The Civil Party Ms. OR Ry (TCCP-105) was questioned by the Civil Parties Lead Co-Lawyers, NUON Chea Defence and the IENG Sary Defence only.

Expression of suffering of Ms. OR RY (TCCP-105)

The Civil Party Ms. OR Ry (TCCP-105) made a statement regarding the suffering she endured during the Democratic Kampuchea period and concluded her testimony.

Testimony of Mr. CHAU Ny (TCCP-187)

The Civil Party Mr. CHAU Ny (TCCP-187) was questioned by the Trial Chamber, Civil Parties Lead Co-Lawyers and the Co-Prosecutors only.

Waiver of the Accused's right to be present in the courtroom

The accused IENG Sary waived his right to be present in the courtroom for Civil Parties TCCP-105 and TCCP-187. The Accused NUON Chea waived his right to be present in the courtroom during the afternoon session. The NUON Chea Defence also requested that a doctor examine NUON Chea during the lunch break to determine whether he was suffering from a particular condition that was causing him to fall asleep. The Chamber granted the request for NUON Chea to follow proceedings from his holding cell and instructed a treating doctor to examine NUON Chea and report to the Chamber before the afternoon session.

KHIEU Samphan Defence questions the right of Civil Parties to address an Accused

The Civil Party TCCP-187 proposed to pose questions to KHIEU Samphan. The KHIEU Samphan Defence argued that the Civil Party was not entitled to address directly an Accused person during his statement of suffering. Counsel for the Civil Party and the Co-Prosecutors argued that there was no such prohibition.

KHIEU Samphan remarked that he reserved his right to comment on particular paragraphs of the Closing Order and that he would consider whether to respond to questions once all evidence had been presented (i.e. at the end of the trial). KHIEU Samphan declined to respond to the questions by the Civil Party.

Expression of suffering of Mr. CHAU Ny (TCCP-187)

The Civil Party made a general statement regarding the harm he suffered during the Democratic Kampuchea period. The Civil Party used this opportunity to pose questions to KHIEU Samphan.

Observations by the parties about the expression of suffering of Mr. CHAU Ny (TCCP-187)

The KHIEU Samphan Defence raised two objections to the content of the Civil Party’s statement of suffering. Firstly, the contents of the statement fell outside the purview of the facts at issue in Case 002/01. Secondly, the rights of the Accused were violated because the Civil Party was allowed to bring probative evidence into his statement, to which the KHIEU Samphan Defence Counsel was unable to respond.

The Chamber responded that the statement by the Civil Party regarding the disappearance of his uncle after the evacuation of Phnom Penh was within the framework of Case 002/01. The Chamber also stated that Civil Parties are entitled to ask questions, just as the Accused are entitled to remain silent.

Record of Rule 87(3) Proceedings							
TC No	OCIJ No	ERN	Title	Class	Note in Khmer	Note in English	Note in French
E3/3967	D22/3455	00565891-00565898 00860728-00860734 00861202-00861210	ពាក្យសុំតាំងខ្លួនជាដើមបណ្តឹងរដ្ឋប្បវេណីរបស់ អោ រី OR Ry 09-VU-03804 Civil party application of OR Ry 09-VU-03804 Demande de constitution de partie civile de RO Ry 09-VU-03804	P	00565899	00660730	00861206
E3/3968	D22/3455a	00586120-00586122 00858556-00858558	ឯកសារបន្ថែមរបស់ដើមបណ្តឹងរដ្ឋប្បវេណី Supplementary information of civil party applicant/Document d’information supplementaire de partie civile	P	00586120	00858556	
E3/3969	D22/253	00421593-00421601 00478475-00478480 00858930-00858938	ពាក្យសុំតាំងខ្លួនជាដើមបណ្តឹងរដ្ឋប្បវេណីរបស់លោក ចៅ នី Civil party application of CHAU Ny Constitution de partie civile de CHAO Ny	P	00421599	00478480	00858937

Oral Orders/Decisions:

- Order allowing the Accused NUON Chea to participate from his holding cell during the afternoon session (waiver of the Accused are attached to this written record).
- Order to return Civil Party OR Ry (TCCP-105) and Civil Party CHAU Ny (TCCP-187) back to their home.
- Order to bring the Accused NUON Chea and KHIEU Samphan back to the detention facility and to return them to the courtroom for the hearing on 4 December 2012.

Orders for Adjournment of Hearing

The hearing will resume on 4 December 2012 at 9:00 am. *ST*

Phnom Penh, 23 November 2012

Greffier


Matteo CRIPPA



Greffier


SE Kolvuthy